

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 50498

Petitioner:

JUDY ROBERTS,

v.

Respondent:

**MONTROSE COUNTY BOARD OF
EQUALIZATION.**

ORDER RETAINING JURISDICTION

THIS MATTER was heard by the Board of Assessment Appeals on June 24, 2009, Karen E. Hart and Diane M. DeVries presiding. Petitioner was represented by Andrew A. Mueller, Esq. Respondent was represented by Carolyn Clawson, Esq. Petitioner is protesting the 2008 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject properties are described as follows:

**Tract No. 2 and Tract No. 3, Todd Gray Large Tract Exemption
Montrose County Schedule Nos. R0020691 and R0020692**

Tract No. 2 is 3.981 acres and Tract No. 3 is 4.692 acres.

Petitioner believes that the subject properties should be classified and valued as agricultural for tax year 2008. The subject properties have been and are being used for grazing in conjunction with the adjacent larger parcel of approximately 600 acres owned by Petitioner. Petitioner purchased the larger parcel, which at the time included the subject properties, to move her horse breeding operation from Norwood to Montrose. It is marginal for grazing.

In 2007 Petitioner subdivided a portion of the larger parcel into what is known as the Todd Gray Large Tract Exemption. Lot 1 is Bradley Gray's building site, Lots 2 and 3 remained in Judy

Roberts' name. Nothing changed as to the use of Lot 2 and 3 after they were subdivided from the large parcel.

Gary Cooper, a sheep rancher, testified that he leased Petitioner's larger parcel and the subject properties in 2008 and 2009 for grazing of his sheep. In exchange for use of the property for pasture, he repairs fences, seeds grass, and maintains ditches to water pastures.

Bradley Gray, assistant ranch manager for Petitioner, testified he contacted a surveyor to subdivide Tract 1 of the Todd Gray Large Tract Exemption where his residence is located. It was as cheap to subdivide three lots as it was one. Petitioner owns all of the property to the north, west, and east of the Todd Gray Large Tract Exemption. No fences separate the subject properties from the larger portion of Petitioner's land. The perimeter of the large parcel is fenced with some cross fencing.

Petitioner's stepson, Bryson Gray, testified that he and his brother ran cattle on the large parcel and the subject properties during 2003, 2004, 2005, 2006, and 2007. He and his brother started in 2003 with a 12 pair, cow and calf, operation. They ran cattle on the subject properties for one to two months a year either in the spring or fall and then moved the cattle to other properties owned or operated by Petitioner. They reinvested their profits from selling calves every year into additional cows. In 2007 all of their cows, 75 head, were sold and the proceeds were invested in land in Delta with his brother. The brothers own their grandfather's brand. In exchange for his use of the properties, each year he completed work, including fence building and irrigation labor, on property owned by Petitioner.

Petitioner is requesting a 2008 actual value based on an agricultural classification for grazing.

Respondent's witness, Teri Warner, Certified Residential Appraiser, did not present an indicated value for the subject properties but instead presented an assessment analysis report.

Respondent presented a vacant land sales analysis as of June 30, 2006 of three to five acre parcels with an average sales price of \$122,800.00 and a median of \$125,000.00. No other adjustments were made to the sales. No site-specific appraisal was presented; the value of the subject properties was determined using the mass appraisal process.

Ms. Warner presented the carrying capacity of a small tract of land in the area. Prior to subdivision in 2007 the subject properties were classified agricultural.

Respondent classified the subject properties as vacant land and assigned an actual value of \$115,000.00 for each of the subject lots for tax year 2008.

Petitioner presented sufficient probative evidence and testimony to prove that the subject properties were incorrectly classified and valued for tax year 2008.

Section 39-1-102(1.6)(a), C.R.S. states:

“Agricultural land”, whether used by the owner of the land or a lessee, means one of the following: (I) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that was used the previous two years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, or that is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as “agricultural land”, consistent with this subsection (1.6), during the ten years preceding the year of assessment.

Section 39-1-102(13.5), C.R.S. states:

"Ranch" means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purposes of this subsection (13.5), "livestock" means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit.

“The statute requires the taxpayer to prove that the land was actually grazed unless . . . the land is part of a larger functional agricultural unit on which grazing or conservation practices have been occurring.” *Douglas County Bd. of Equalization v. Clarke*, 921 P.2d 717, 718 (Colo. 1996).

The Board determines that the subject properties are used and have been used for several years as a ranch in conjunction with Petitioner’s larger parcel adjacent to the subject properties. From 2003 through 2007 the large parcel and the subject properties were used by Petitioner’s stepsons for grazing cattle, and presently the large parcel and the subject properties are used for grazing by Mr. Cooper’s sheep. There are no fences fencing out any animal on Petitioner’s larger parcel.

The Board concludes that the 2008 classification of the subject properties should be dry land grazing.

ORDER:

Respondent is ordered to provide the Board with the 2008 actual value of the subject properties as dry land grazing within 14 days of the date of this Order.

Petitioner may respond to the 2008 actual value provided by Respondent in accordance with the preceding paragraph within 7 calendar days of the receipt of the value.

DATED and MAILED this 17th day of September 2009.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart
Karen E. Hart

Diane M. DeVries
Diane M. DeVries

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.

Heather Flannery
Heather Flannery



<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>JUDY ROBERTS,</p> <p>v.</p> <p>Respondent:</p> <p>MONTROSE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 50498</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 24, 2009, Karen E. Hart and Diane M. DeVries presiding. Petitioner was represented by Andrew A. Mueller, Esq. Respondent was represented by Carolyn Clawson, Esq. Petitioner is protesting the 2008 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject properties are described as follows:

**Tract No. 2 and Tract No. 3, Todd Gray Large Tract Exemption
Montrose County Schedule Nos. R0020691 and R0020692**

Tract No. 2 is 3.981 acres and Tract No. 3 is 4.692 acres.

Petitioner believes that the subject properties should be classified and valued as agricultural for tax year 2008. Respondent classified the subject properties as vacant land and assigned an actual value of \$115,000.00 for each of the subject lots for tax year 2008.

On September 17, 2009 the Board issued an Order Retaining Jurisdiction concluding that the 2008 classification of the subject properties should be dry land grazing and ordering Respondent to provide the Board with the 2008 actual value of the subject properties as dry land grazing within 14 days of the date of the Order. As of October 14, 2009 the Board has not received this value from Respondent.

Since Respondent has not responded to the Board's Order Retaining Jurisdiction dated September 17, 2009, the Board grants Petitioner's estimate of value for the subject properties, as listed on the Petition, of \$60.00.

ORDER:

Respondent is ordered to classify the subject properties as agricultural dry grazing land and reduce the actual value to \$60.00 for tax year 2008.

The Montrose County Assessor is directed to change his/her records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 15th day of October 2009.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

Diane M DeVries

Diane M. DeVries

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

H. Flannery

Heather Flannery

